STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1648

Jerry J. Duwenhoegger, Sr.,
Appellant,

vs.

Lynn M. Dingle,
Respondent.

Filed September 9, 2008
Affirmed

Lansing, Judge

Washington County District Court
File No. C3-07-2137

Jerry J. Duwenhoegger, Sr., #201857, 970 Pickett Street North, Bayport, MN 55003-1490 (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

LANSING, Judge

A hearing officer for the Minnesota Department of Corrections found that Jerry Duwenhoegger, who is incarcerated at the Minnesota Correctional Facility at Stillwater,

violated two offender-discipline regulations and imposed thirty days of segregated confinement. On appeal from the denial of his pro se petition for a writ of habeas corpus, Duwenhoegger argues that the procedure and the confinement violated his right to procedural due process. Because Duwenhoegger has not demonstrated that the segregated confinement implicated his due process rights or that he was denied procedural due process, we affirm.

F A C T S

Jerry Duwenhoegger is currently incarcerated at a Department of Corrections (DOC) facility in Stillwater, Minnesota. He is serving consecutive terms of 190 and 180 months for two counts of conspiracy to commit first-degree murder. *State v. Duwenhoegger*, No. C5-99-1237 (Minn. App. June 27, 2000).

The DOC charged Duwenhoegger in November 2006 with violating two offender-discipline regulations—disobeying a direct order and disorderly conduct. The disciplinary-violation charges grew out of Duwenhoegger's attempt to send a package and a letter to his minor child.

After giving Duwenhoegger notice of the charges, a DOC hearing officer held a formal disciplinary hearing. The evidence at the hearing included a copy of a court order from November 2005, in which the court determined that it was "necessary for the safety and welfare of the minor child to withhold her address and telephone number from [Duwenhoegger]" and that Duwenhoegger "does not have a legal right to contact and visitation with his daughter while he is in prison." The hearing officer found Duwenhoegger guilty of both charged offenses and ordered him to serve thirty days in

segregated confinement. The hearing officer did not extend Duwenhoegger's incarceration as part of his punishment. Duwenhoegger appealed the hearing officer's decision, and the warden denied the appeal.

Duwenhoegger filed a petition for a writ of habeas corpus to seek review of the warden's denial of his appeal. The district court denied the petition and Duwenhoegger now appeals.

D E C I S I O N

A writ of habeas corpus is a statutory civil remedy available "to obtain relief from [unlawful] imprisonment or restraint." Minn. Stat. § 589.01 (2006). It may be used to raise claims involving fundamental constitutional rights, including a petitioner's constitutional right to procedural due process. *See Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005) (reviewing claim that petitioner was entitled to writ of habeas corpus because his constitutional right to procedural due process had been violated). When the facts are undisputed, we review de novo a district court's denial of habeas relief. *State ex rel. Hussman v. Hursh*, 253 Minn. 578, 578 n.1, 92 N.W.2d 673, 673 n.1 (1958) (per curiam).

Duwenhoegger argues that the warden violated his right to procedural due process by denying his appeal that challenged his thirty days of segregated confinement. We reject Duwenhoegger's argument for two reasons.

First, Duwenhoegger has failed to demonstrate that the thirty-day term of segregated confinement implicated his due process rights. The Due Process Clauses of the United States Constitution and the Minnesota Constitution protect against the

deprivation of life, liberty, or property without due process of law. U.S. Const. amends. V, XIV; Minn. Const. art. I, § 7. A prisoner's interest in liberty is necessarily more restricted than that of ordinary citizens because "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights." *Sandin v. Connor*, 515 U.S. 472, 485, 115 S. Ct. 2293, 2301 (1995) (quotation omitted). Within these limitations, however, a prisoner must be afforded due process of law before the term of his imprisonment is extended, *Carrillo*, 701 N.W.2d at 773, and before he is subjected to restraints that "impose[] atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484, 115 S. Ct. at 2300; *see also Carrillo*, 701 N.W.2d at 770-71 (quoting *Sandin* language with approval).

Duwenhoegger does not dispute the district court's finding that his term of imprisonment was not extended due to his violations. Rather he asserts that he had a liberty interest in being free from thirty days of segregated confinement. The United States Supreme Court analyzed similar facts in *Sandin v. Connor* and determined that the petitioner's thirty-day term in segregated confinement "did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest." 515 U.S. at 486, 115 S. Ct. at 2301. The *Sandin* Court did not categorically hold that a prisoner could never have a liberty interest in being free from a thirty-day term of segregated confinement. Rather the Court examined the specific conditions of Connor's incarceration and concluded that "Connor's punishment, . . . , with insignificant exceptions, mirrored those conditions imposed upon inmates in administrative

segregation and protective custody" and "did not exceed similar, but totally discretionary, confinement in either duration or degree of restriction." *Id.* at 486, 115 S. Ct. at 2301.

The record in this case does not contain any evidence indicating that Duwenhoegger's confinement, when compared with the ordinary incidents of prison life at the Stillwater facility, was more severe than the confinement in *Sandin*. Furthermore, Duwenhoegger's petition does not contain any specific allegations that his confinement constituted an atypical and significant hardship. Thus, we conclude that the district court properly denied Duwenhoegger's petition because he has failed to demonstrate, or even adequately allege, any due process rights that were implicated by the thirty-day term of segregated confinement. *See Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987) (stating that "[t]he burden is on the petitioner to show the illegality of his detention"), *review denied* (Minn. Nov. 24, 1987); *see also Sanders v. State*, 400 N.W.2d 175, 176 (Minn. App. 1987) (stating that "habeas corpus hearing is not needed when the defendant does not allege sufficient facts to constitute a prima facie case of relief"), *review denied* (Minn. Apr. 17, 1987).

The second reason we reject Duwenhoegger's argument is that the record does not support his claim that he was denied due process. The United States Supreme Court has held that minimum due process for an inmate who is accused of violating a prison regulation includes "written notice of the claimed violation at least [twenty-four] hours before the disciplinary hearing," the opportunity "to call witnesses and to present documentary evidence if doing so will not jeopardize institutional safety or correctional goals," and "a written statement from an impartial decisionmaker identifying the

evidence relied on and the reasons for the disciplinary action." *Hrbek v. Nix*, 12 F.3d 777, 780-81 (8th Cir. 1993) (summarizing standard set forth in *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 2978-80 (1974)). Duwenhoegger was not denied any of these procedures.

He received written notice of the claimed violation on November 22, 2006, six days before the disciplinary hearing. The record indicates that he was permitted to testify at the hearing and call witnesses. The record also includes a written statement from the hearing officer explaining that he relied on a caseworker's testimony that the mother of Duwenhoegger's daughter reported that the child received a letter and a present from Duwenhoegger, a copy of a court order declaring that Duwenhoegger "does not have a legal right to contact and visitation with his daughter while he is in prison," Duwenhoegger's admission that he sent "a hand written letter and package" to his daughter, and Duwenhoegger's admission that he was served with the order stating he did not have a right to contact his daughter. The officer concluded that a preponderance of evidence demonstrated that Duwenhoegger had disobeyed a direct order by refusing to comply with a written order issued by a "court facility" and committed disorderly conduct by engaging in disruptive conduct. Following the hearing, Duwenhoegger was also permitted to appeal the hearing officer's decision and was provided with a written decision from the warden. These procedures fully satisfy the procedural due process requirements.

Duwenhoegger argues that he was denied due process because he was not permitted to obtain and submit "court orders [and] documents." But the court orders and

documents that he lists relate to a November 1997 district court order that would not have affected the determination. According to Duwenhoegger, the November 1997 order grants him "visitation [and] parental rights [and] contact according [to] the laws [and] statutes of the State of Minnesota." The record, however, demonstrates that Duwenhoegger's parental rights were modified in November 2005 following his 1999 conviction. Thus, even if the order that was issued in November 1997 granted Duwenhoegger "visitation [and] parental rights [and] contact," Duwenhoegger lost these rights when the court determined that it was "necessary for the safety and welfare of the minor child to withhold her address and telephone number from [Duwenhoegger]," and the court declared that Duwenhoegger "does not have a legal right to contact and visitation with his daughter while he is in prison." *See* Minn. Stat. § 518.17, subd. 3(b) (2006) (stating that court may deny parental right to reasonable access and telephone contact with minor child if "it is necessary to protect the welfare of a party or child").

We therefore conclude that the hearing officer did not violate Duwenhoegger's due process rights by declining to consider the 1997 order. *See* Minn. R. Evid. 402 (stating that "[e]vidence which is not relevant is not admissible"). Duwenhoegger has not demonstrated that the segregated confinement implicated his due process rights or that he was denied procedural due process.

Affirmed.